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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re:

Roman Catholic Bishop of Great Falls, Montana,
a Montana Religious Corporate Sole
(Diocese of Great Falls),

Debtor-in-Possession.

Case No.: 17-60271

Chapter 11

NOTICE OF PRELIMINARY HEARING

Date: To Be Determined

Time:

Location:

**DIOCESE OF GREAT FALLS-BILLINGS OBJECTION TO AMENDED JOINT
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

The Roman Catholic Bishop of Great Falls, Montana, a Montana Religious Corporate Sole (Diocese of Great Falls-Billings) ("Diocese"), Debtor-in-Possession herein presents its opposition to the Plaintiffs' Amended Joint Motion for Relief from the Automatic Stay (Docket No. 266) to prosecute two lawsuits in Montana State Court.

INTRODUCTION

The Abuse Claimants' request for stay relief to pursue the State Court actions is herein opposed. While this might solve two of the cases, it does not solve the other 84 cases. There is no mechanism proposed, and one cannot propose, to bring those case results back into the bankruptcy with the result being a consensual Chapter 11 Plan of Reorganization. To the

contrary, Debtor will be forced to wait out the litigation, and its unknown result for what is likely several months, and possibly years. In the interim, valuable estate assets will be depleted for administrative expenses. Those assets could be used for a settlement now.

Under the Claimants' scheme, the Debtor could be exposed to liabilities in excess of insurance coverage limits. There is no mechanism to ensure that the proposed process to try these claims will result in settlement; but it is certain that the Debtor would be exposed to millions of dollars of liability. Accordingly, the Court should not grant Claimants' motions to lift the stay.

ARGUMENT

Stay Relief Does not Assist in Making Substantial Progress Towards a Consensual Plan

The Claimants, supported by the Committee, request stay relief to litigate two insured claims, out of 22 insured, and 86 total claims, to conclusion. What happens after that, is for the most part, unknown. This is certainly not a mainstream process in that most bankruptcy cases involving stay relief to litigate claims, contemplate a situation where all claims are resolved, not just two out of 86, as in the instant case.

The Committee cites to ten of the twelve *Curtis* factors in support of the Motions for Stay Relief. *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)¹. However, not all of the twelve *Curtis* factors are relevant in every case, "[n]or is a court required to give each of the *Curtis* factors equal weight in making its determination." *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 560 (Bankr. C.D. Cal. 2004). Debtor will discuss what it believes are the

¹ The twelve factors cited in *Curtis* are not the exclusive factors used within the Ninth Circuit. As an example, the three factors in *In re Pro Football Weekly*, 60 B.R. 824, 826 (N.D. Ill. 1986) have been used or considered, i.e., *In re Quintrall*, 2007 WL 7540996, at Page 4 (9th Cir. BAP July 5, 2007), discussing the *Pro Football Weekly* factors as well as the seven factors set forth in *In re America West Airlines*, 148 B.R. 920, 923 (Bankr. D. Ariz. 1993). In *In re Santa Clara County Fair Association, Inc.*, 180 B.R. 564, 567 (9th Cir. BAP 1995), the nine factors in *America West* were discussed.

most important factors to this case. The Court stated in *In re Kronemyer*, 405 B.R. 915, 921 (9th Cir. BAP 2009), "[w]hat constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." See, also *In re Pederson*, 563, B.R. 327, 334 (Bankr. D. Mont. 2017), and *In re Reisbeck*, 505 B.R. 546, 552 (Bankr. D. Mont. 2014).

Further, when weighing the *Curtis* factors to grant relief from stay to permit pending State Court litigation to proceed, the factors are not given equal weight. "The bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate." *Green v. Brotman Med. Ctr., Inc.*, 2008 WL 8444797, at Page 6 (9th Cir. BAP August 15, 2008), citing *In re United Imports, Inc.*, 203 B.R. 162, 166 (Bankr. D. Neb. 1996).

The first *Curtis* factor, whether the relief will result in a partial or complete resolution of the issues, is critical. Claimants here propose litigation of two cases to conclusion in State Court, and stopping at that point. There is no explained mechanism or formula as to how to this process is going to advance the presentation of a consensual Plan of Reorganization. There are many variables at play. First and foremost, if the State Court actions were litigated to judgment, how then would those judgments be used to promote a consensual Plan of Reorganization? It appears the Claimants' goals are to use such judgments to apply pressure, or for leverage, to cause the Debtor and its insurance carrier to settle. However, that goal is replete with variables. Some of these variables are set forth in the following points:

- This procedure does not consider the potential for an appeal in the State Court action(s).
- The State Court actions are fact intensive and differ from the remaining 84 claims.
- This procedure does not consider the fact that the parties could settle one or both of the State Court action(s).

- There is no bankruptcy mechanism for formalizing any State Court judgments to be precedential as to the remaining 84 claims in the bankruptcy case.
- There is no certainty that the State Court Judge will agree to try, what is in reality, an advisory opinion.
- The bankruptcy estate will be depleted, while the State Court litigation is proceeding.

And the list goes on. The fact remains there is no consensual Plan of Reorganization, or for that matter, even a consensual procedure for bringing any State Court judgments back into the bankruptcy case, which would result in a consensual Plan of Reorganization. The Committee's and the Claimants' undefined process of determining two discrete and fact intensive State Court claims, and having them used to somehow determine the value for the remaining 84 claims, is not agreed to by the Debtor.²

This first element of the *Curtis* factors should be given the most weight, and in Debtor's opinion is dispositive of the question of whether or not stay relief should be granted. The Committee, admittedly, provides no definition whatsoever of how reducing these claims to judgment will cause a partial or complete resolution of the issues. "The automatic stay should be lifted because allowing the Plaintiffs' State Court Cases to proceed *will help the dispute* over the value of a Sexual Abuse Claim." (emphasis added) (Committee's Memorandum of Law, Docket No. 261-1, at Page 7).

Another factor discussed is whether the litigation in another forum would prejudice the interest of other creditors, the Creditors' Committee, and other interested parties. This is factor number 7 of the *Curtis* factors. Given the unknown and uncertain reaction of the two Claimants as to the judgment results, i.e., whether they are going to pursue such judgment as their own, or

² A review of the eighty-six (86) filed proof of claims reveals that each is unique as to frequency, type and severity of the abuse, which would have occurred for the most part at the hands of different abusers, at different locations, under different circumstances with varying impact on the victims.

allow the judgment, and any insurance proceeds or contribution by Debtor's estate, to be "kicked in" to a pot for all 86 Claimants. It would seem that the two litigating Claimants could certainly prejudice the other Claimants by effectively taking a larger share of the estate and insurance proceeds towards their respective claims. There is a potential here that the remaining 84 Claimants, more particularly those whose claims are not covered by insurance, will be harmed by this litigation and its potential outcomes. This would weigh in opposition to the Court granting stay relief. *See generally, In re Baleine, LP*, 2015 WL 5979948, at Page 10 (C.D. Cal. October 13, 2015), and *In re Sunland Inc.*, 508 B.R. 739, 743-744 (Bankr. D. N.M. 2014).

Factor number 11, whether the foreign proceedings have progressed to the point where the parties are prepared for trial, is also important. Admittedly, these parties are not ready for trial. "But there remains some additional discovery that the parties undoubtedly will conduct. . . . There may be motions to compel certain redacted information not produced by the Diocese that still need to occur." (Fasy Declaration, Docket No. 266-3, at paragraphs 4 and 6.) "However, there remains some additional discovery that the parties undoubtedly will conduct. . . . Upon completing some additional discovery, the case is ready for trial." (de la Cruz Declaration, Docket No. 266-1, at paragraph 5.) It is difficult to correctly project how long it would take to finish discovery, complete all pretrial motions and other processes required by the State Court, and conduct and conclude the two trials. However, it would be a fair statement to say that the foreign proceedings have not yet progressed to the point where the parties are presently prepared for trial, given the admissions made in the Declarations. *Curtis* factor number 11 is not met.

Moreover, there are practical logistical problems which are likely to result in further delay. Prior to the Diocese having filed its Chapter 11 petition, these abuse claims, all of which were pending in the Montana Eighth Judicial District Court in Cascade County (Great Falls), had been

assigned to a Lake County, Montana, judge, the Hon. Kim Christopher, after the voluntary recusal of all of the 8th Judicial District judges. Judge Christopher will need to find a significant block of time to absent herself from her own busy docket in Lake County to come over to Great Falls to try these cases at the Cascade County Courthouse, where there are only three courtrooms being shared by four Great Falls judges, each with his/her own sizeable docket. When counsel for the Diocese and the claimants met with Judge Christopher in August, 2016, in an attempt to schedule trials, the earliest date that was then agreed to was July, 2017, and the availability of a courtroom in Great Falls for the July date was unknown.

Factor number 12 considers the impact of the stay on the parties and the "balance of hurt." The Claimants' proposed process is to prosecute the two State Court actions to judgment. Once concluded, and as discussed before, there is no mechanism for bringing that judgment for the insurance back into the bankruptcy estate. It is unclear as to whether or not the insurance proceeds are property of the estate. *See, In re Endoscopy Center of Southern Nevada, LLC*, 451 B.R. 527, 542-547 (D. Nev. 2011). What is clear is that Claimants do not limit their claim to insurance proceeds. If stay relief is granted in this case, the bankruptcy estate will suffer great prejudice from having the action proceed in State Court, as the enforcement of any judgment will not be limited to insurance coverage and non-estate assets.

Again, the stay relief considered here does not remove the claim from the bankruptcy case, nor insulate the Debtor by confining any potential judgment to insurance proceeds only, as is done in the classic sense. Debtor argues that the potential of an excess judgment is very real harm and should weigh in opposition to the Motions for Stay Relief. In *In re Turner*, 55 B.R. 498, (Bankr. N.D. Ohio 1985), the Court found there was no prejudice to the debtor on granting stay to prosecute RICO claims "Where the claim is one covered by insurance or indemnity, continuation

of the action should be permitted since hardship to the debtor is likely to be outweighed by hardship to the plaintiff." *Turner*, citing 2 *Collier On Bankruptcy*, paragraph 362.07 [3] (15th Ed. 1985). See, also *Foust v. Munson S.S. Lines*, 299 U.S. 77, 87 (1936), (no harm where the plaintiff was entitled to maintain an action against the insurer for the amount of his judgment but not exceeding the amount of insurer's liability to the debtor under the policy.) *In the matter of Fernstrom Storage and Van Co.*, 938 F.2d 731, 736, (7th Cir. 1991) ("[W]e agree with the conclusion these cases reach: debtors-defendants suffer little prejudice when they are sued by plaintiffs who seek nothing more than declarations of liability that can serve as a predicate for recovery against insurers, sureties, or guarantors.") *Noli v. C.I.R.*, 860 F.2d 1526 (9th Cir. 1988) (stay lift allowed for tax court case to proceed to judgment, but collection not allowed, deemed not to affect the estate); and *In re Downey Financial Corp.*, 428 B.R. 595, 609-610 (Bankr. D. Del. 2010) (stay lift deemed of no harm to debtor when policy provided coverage for up to \$10 million of coverage, while the claim was to collect only \$880,000.00). In the case of *In re Advanced Med. Spa Inc.*, 2016 WL 6958130, at Page 4 (9th Cir. BAP November 28, 2016), the Court stated, "Lapierre represented in her motion that she only sought relief from stay for the purpose of collecting whatever insurance proceeds were available. . . . Our holding is consistent with legislative comments . . . To permit proceedings to continue in their place of origin **when no great prejudice to the bankruptcy estate would result, in order to lead the parties to their chosen forum and relieve the bankruptcy court from the many duties that may be handled elsewhere.**" *Advanced Med.*, citing *H.R. Rep.* 95-595, 341, as reprinted in 1978 U.S.C.C.A.N., 5963, 6297 (emphasis in original). The converse certainly should hold true here; if the litigation and any associated judgment is not limited to insurance proceeds, there certainly is prejudice and

harm that will be brought against the estate and the Debtor if the stay relief is allowed to go forward, and the case is tried to conclusion.

If Stay Lift is Granted, any Recovery Should be Limited to Insurance Proceeds

Standard practice in Montana is to limit stay relief actions to insurance recovery. "In this Court, motions to modify stay seeking relief limited to insurance coverage routinely are granted, with the relief usually limited to the extent of insurance coverage, as *Les Meister* requests, and the moving party often is required to return to court after obtaining a judgment to request further relief." *In re Cini*, 2012 WL 2374224, at Page 8 (Bankr. D. Mont. June 22, 2012). See, also *In re Miller*, 228 B.R. 203, 206-207 (N.D. Ill. 1999) (enforcing prior order limited stay relief to the extent of insurance coverage), *In re Fernstrom Storage and Van Co.*, 100 B.R. 1017, 1024 (Bankr. N.D. Ill. 1989). Given the earlier arguments, and more specifically those relating to harm and prejudice, if this Court determines that granting stay relief is appropriate, it should be conditioned on limiting any relief to the available insurance proceeds.

The Committee argues that Catholic Mutual does not have standing to direct the Debtor regarding stay relief. The Debtor, and the Committee on behalf of the Claimants, have generally discussed stipulating for stay relief, or that the Debtor may not oppose stay relief, but no stipulation or agreement has been put forth in that is satisfactory to the Debtor. The Debtor is well aware that the insurance policies constitute a large major asset of the bankruptcy estate. Ultimately, a consensual Plan of Reorganization with contributions from the Debtor, Catholic Mutual, and agreement with the Committee and the Plaintiffs' groups is the goal here.

The Debtor, among other things, as insurance certificate holder is contractually bound to:

- 1) cooperate with Catholic Mutual and, upon Catholic Mutual's request, assist in making settlements in conduct of suits and enforcing any right of contribution or indemnity against any

person or organization who may be liable to the named entities; 2) attend trials and hearings and assist in the securing in giving evidence in obtaining the attendance of witnesses; and 3) not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the accident.

Given these duties of cooperation, and Catholic Mutual's right to control defense and settlement of these claims, Catholic Mutual has asserted that the Debtor should not enter into any negotiations or execute any agreement or stipulation with the Committee or Claimants' counsel, including agreeing to stay relief, without advance approval and consent from Catholic Mutual. Debtor understands that any actions or inactions taken that contravene Catholic Mutual's rights, or breach of any duties owed Catholic Mutual may jeopardize coverage. Without an agreement that does not place Debtor at odds with its insurer, Debtor cannot stipulate to or not oppose the stay relief motions proposed here. This decision is in the best interest of the bankruptcy estate.

CONCLUSION

For the reasons set forth herein, the Debtor, Diocese of Great Falls-Billings, opposes stay relief as requested for the two Claimants' State Court actions, as the request is now styled.

RESPECTFULLY SUBMITTED this 26th day of January, 2018.

ELSAESSER ANDERSON, CHTD.

/s/ Bruce A. Anderson _____

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CERTIFICATE OF SERVICE

I, Bruce A. Anderson, declare as follows:

I am employed by Elsaesser Anderson, Chtd., Coeur d'Alene, Idaho; I am over the age of eighteen years and not a party to this action; the firm's business address is 320 East Neider Avenue, Suite 102, Coeur d'Alene, Idaho 83815.

I certify that on January 26, 2018, I served the foregoing document on all ECF participants as indicated on the Court's ECF system.

Additionally, by regular first class mail, I mailed a copy to the parties on the attached MML, and to and to confidential claimant C.E.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: January 26, 2018

/s/ Bruce A. Anderson

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Label Matrix for local noticing

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Case 17-60271-JDP

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 Great Falls, MT 59401-1501

St. Ann Mission
 102 Shell St
 Vida, MT 59274

St. Ann Mission
 13327 Mt Highway 200
 Fort Shaw, MT 59443-9409

St. Anthony Catholic Church
 235 Main St E
 Box Elder, MT 59521

St. Anthony Mission
 1100 Main St
 Denton, MT 59430

St. Anthony Parish
 413 3rd Ave W
 Culbertson, MT 59218

St. Anthony Parish
 Rev. Barton Stevens
 317 West 7th St
 Laurel, MT 59044-2054

St. Benedict Church
 Rev. Douglas Krings
 503 Main St
 Roundup, MT 59072-2425

St. Bernard Mission
 c/o St. Matthew, Rev. O'Neil
 219 7th St SE
 Sidney, MT 59270-5034

St. Bernard's Parish
 226 Wicks Lane
 Billings, MT 59105-3799

St. Catherine Mission
 317 7th St W
 Fairview, MT 59221

St. Charles Borromeo Mission
 21228 S Pryor Gap Road
 Pryor, MT 59066

St. Cyril Parish
 100 Hill Ave
 Geyser, MT 59447

St. Dennis Parish
76 Highway 1
Crow Agency, MT 59022

St. Francis Xavier Parish
PO Box 160
Circle, MT 59215-0160

St. Gabriel Parish
404 8th St W
Chinook, MT 59523

St. Honorata Mission
22 3rd Ave
Musselshell, MT 59059

St. Joan of Arc Parish
100 Church Ave
Ekalaka, MT 59324

St. John Church
PO Box 309
Bridger, MT 59014-0309

St. John the Baptist
412 Leavitt Ave
Jordan, MT 59337

St. Joseph
206 Orchard Ave
Hysham, MT 59038

St. Joseph
P.O. Box 789
Wolf Point, MT 59201-0789

St. Joseph Mission
PO Box 309
Bridger, MT 59014-0309

St. Joseph Parish
910 McLeod St
Big Timber, MT 59011-8097

St. Joseph Parish
Rev. Joseph Ponessa
716 N Custer Ave
Hardin, MT 59034

St. Joseph Parish
Rev. Patrick Zabrocki
301 N Main St
Plentywood, MT 59254-1649

St. Jude Thaddeus Parish
Rev. Daniel Wathen
624 4th St
Havre, MT 59501

St. Labre Parish
Tongue River Road
Ashland, MT 59003

St. Leo the Great Parish
Rev. Samuel Spiering
102 W Broadway St
Lewistown, MT 59457-1735

St. Margaret Mary Parish
320 Water Ave
Colstrip, MT 59323-9685

St. Margaret Mary Parish
400 Johannes
Big Sandy, MT 59520

St. Margaret Parish
206 1st Ave N
Clyde Park, MT 59018

St. Mark Parish
128 Castner St
Belt, MT 59412

St. Mary Catholic Church
Rev. Joseph Diekhans
11 W Quincy Ave
Chester, MT 59522

St. Mary Church
212 4th Ave
Custer, MT 59024

St. Mary Church
Rev. Leo McDowell
511 S F St
Livingston, MT 59047-3539

St. Mary Mission
100 Main St
Raynesford, MT 59469

St. Mary Parish
Rev. Gregory Staudinger
P.O. Box 956
Columbus, MT 59019-0956

St. Mathias
305 Kemp St
Ryegate, MT 59074

St. Matthew Parish
219 7th St SE
Sidney, MT 59270-5034

St. Michael
307 S Woodard St
Absarokee, MT 59001

St. Michael Mission
120 2nd Ave
Savage, MT 59262

St. Patrick
401 Main St
Medicine Lake, MT 59247

St. Patrick Co Cathedral
215 N 31st
Billings, MT 59101-1908

St. Paul Indian Mission
#1 Mission Dr
Hays, MT 59527

St. Peter
PO Box 217
Wibaux, MT 59353-0217

St. Philip
P.O. Box 217
Wibaux, MT 59353-0217

St. Pius X Catholic Church
Rev. Wayne Pittard
717 18th St W
Billings, MT 59102-4001

St. Raphael Parish
Rev. Jose Valliparambil
412 3rd Ave N
Glasgow, MT 59230-1825

St. Rose of Lima Church
Rev. Domenico Pizzonia
101 4th St W
Stanford, MT 59479

St. Theresa Mission
212 N Main St
Lambert, MT 59243

St. Theresa of the Little Flower
16638 Iowa
Broadview, MT 59015

St. Thomas Aquinas
10610 Wing Rd
Hogeland, MT 59529

St. Thomas Mission
201 W Conser Ave
Plevna, MT 59344

St. Thomas Mission
PO Box 187
Popular, MT 59255-0187

St. Thomas The Apostle
Rev. Stephen Zabrocki
2055 Woody Dr
Billings, MT 59102-2803

St. Thomas the Apostle
210 1st Ave SE
Harlem, MT 59526-9024

St. William Mission
P.O. Box 646
Livingston, MT 59047-0646

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800 Nicollet Mall, BC-MN-H21N,
Minneapolis, Minnesota 55402-7000

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Great Falls, MT 59405-5608

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St. Louis, MO 63144-1342

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COEUR D'ALENE, ID 83815-6007

BRUCE ALAN ANDERSON
ELSAESSER ANDERSON, Chtd.
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Drew Blewett
Hoyt & Blewett PLLC
PO Box 2807
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Gary Dyer *W* *NC*
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920 W. Riverside Ave,
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JOSEPH PONESSA
710 NORTH CUSTER AVE
HARDIN, MT 59034-1527

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DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.
101 RIVER DRIVE NORTH
GREAT FALLS, MT 59401-2599

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Holy Family
530 Main St
Winifred, MT 59489

Addresses marked (c) above for the following entity/entities were corrected
as required by the USPS Locatable Address Conversion System (LACS).

Holy Family
102 1st Ave N
Glentana, MT 59240

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Abuse Survivors

(u) BERKLEY RESEARCH GROUP

(u) Catholic Mutual Relief Society

(u) Corpus Christi (Great Falls)

(u) HEAD START, INC.

(u) Holy Family Parish Great Falls, Montana

(u) Holy Spirit (Great Falls)

(u) Mary Queen of Peace, Billings, Montana

(u) OFFICIAL COMMITTEE OF UNSECURED CREDITORS